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broad doctrine of prescription and the reasons of public policy supporting it are as easily applicable to the acquisition of any incorporeal right of use, convenience, or value to the public, as to the acquisition of any purely private rights. Yet it must be granted that although the presumed dedication (based often on estoppel) of cemeteries and springs is not infrequent,[13] cases are exceedingly rare in either country where the public has gained a prescriptive right in the nature of a *jus spatiandi*. It seems likely that the common law courts will continue to show a disinclination to extend such acquisition beyond the established cases of highways, parks and squares.

TOLLING OF STATUTE OF LIMITATION BY ONE OF SEVERAL OBLIGORS. — The doctrine that acknowledgment or part payment extends a debt or revives one barred, is a judicial engrafting upon the original Statute of Limitations of James I. It is now generally recognized that such payment or acknowledgment operates not as a waiver of the defense of the statute, continuing the cause of action, but as a fresh promise. Either view presents difficulty as to consideration, but the case must be regarded as a lingering example of moral consideration supporting a promise.[1] If, then, the theory is that of a new contract, there must exist circumstances from which an unequivocal promise can be inferred. Such a promise, therefore, can be made only by the party to be charged or his authorized agent.[2] Yet there has existed a great conflict, now partly allayed by statutes, as to the effect of payment by one of several persons having a community of interest. Thus, Lord Mansfield, in a leading case [3] now overruled by statute, held that payment by one joint obligor, for purposes of the statute, is payment by all; while the United States Supreme Court has reached an opposite result, concurred in by a majority of the states.[4] There is a similar diversity of views as to the effect of part payment by a partner after dissolution of the partnership. Here, too, regarding the dissolved partners merely as joint obligors, the majority of the states deny one authority to revive or extend a debt against others. Some, however, follow the early English authority; still others sanction only an extension, not a revival, while a few make notice to the creditors a determining factor. The prevailing rule, which has recently been adopted in several states by statute, seems sound. Whether one person has power to bind another by his promise, express or implied, is a question of fact in each instance, but from the mere relationship of joint obligors no such agency can be inferred.

It would seem that when the question arises through payments by one of several testamentary beneficiaries the same rule must guide, and part payment by one should affect only his own interest or that of those for whom he is authorized to act. Yet the English Chancery Division has recently held, in a case arising under a statute making a decedent's real estate assets in equity for simple contract debts, that part payment by a tenant for life of part of the estate bound persons who were both remaindermen and

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[13] Boyce *v.* Kalbaugh, 47 Md. 334; Larkin *v.* Ryan, 25 Ky. Law Rep. 613.

[1] See 16 HARV. L. REV. 517.
[2] Payne *v.* Slate, 39 Barb. (N. Y.) 634, 638.
[3] Whitcomb *v.* Whiting, 2 Doug. 652.
[4] Bell *v.* Morrison, 1 Pet. (U. S.) 351.

devisees of other lands. *In re Chant*, [1905] 2 Ch. 225. By previous adjudication it has been decided in England that the life tenant, since it is his duty to keep down the interest on the estate, by virtue of his tenancy, has implied authority to bind those in remainder.[5] No such identity of interest, with the resulting implication of authority, seems to be recognized in this country.[6] But in going beyond this step and holding that payment by the life tenant keeps alive the testator's debt against the estate of specific devisees of other land the court followed what are in fact *dicta* in an earlier case which have been much criticised in later English decisions.[7] Not even in England can one devisee, as such, deprive another of his statutory privilege.[8] In this country payment by a widow of mortgaged premises has been held not to remove the bar as against the heir.[9] Again, payment by the heir or grantee of the mortgagor as to part of mortgaged premises does not arrest the operation of the statute in favor of the grantee of another part.[10] Though American cases of this nature have been rare, they show a desirable uniformity with the cases of joint obligation, and a tendency to restrict the anomalous doctrine of part payment to its proper, narrow limits.

RECENT CASES.

ACCORD AND SATISFACTION — VALIDITY — EFFECT OF STATUTE OF FRAUDS. — In consideration that the defendant marry him, the plaintiff orally promised to consider a debt which the former owed him as paid and satisfied. After marriage the plaintiff brought action on the obligation and, to the defendant's plea of accord and satisfaction, objected that as the agreement was oral, it was invalid under the Statute of Frauds making contracts in consideration of marriage unenforceable. *Held*, that the plea is good. *Weld* v. *Weld*, 81 Pac. Rep. 183 (Kan.).

There are two possible views of the nature of an accord and satisfaction. The first is illustrated by the present case, which regards it as an executed agreement whereby the original obligation is utterly extinguished. *Lavery* v. *Turley*, 6 H. & N. 239. The other theory holds that it is a contract executory as to the obligee's promise. He has agreed never to sue on his original obligation which is considered as still existing; and this promise is enforced by courts of law as a defense to the original liability. This view is suggested by the rule that upon the rescission of the accord and satisfaction the original obligation may be sued upon. *Heavenrich* v. *Steele*, 57 Minn. 221. However, as this rule is supported upon the ground that the extinguished obligation is revived by the rescission, it furnishes but slight basis for the second theory. Furthermore, as the plea of accord and satisfaction was recognized before a contract never to sue or indeed before any simple contract was known to the law, the theory that in allowing this defense the court is merely enforcing the plaintiff's promise not to sue, is clearly untenable. Y. B. 21 & 22 Edw. I. 586 (Rolls series).

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[5] Roddam *v.* Morley, 1 De G. & J. 1; *In re* Hollingshead, 37 Ch. D. 651.

[6] Ætna Life Insurance Co. *v.* McNeely, 166 Ill. 540.

[7] Roddam *v* Morley, *supra*. For a consideration of the English authorities, see 49 Sol. J. 563, 682.

[8] See Dickenson *v.* Teasdale, 1 De G. J. & S. 52; Cooper *v.* Cresswell, L. R. 2 Ch. 112.

[9] Nickell *v.* Leary, 91 N. Y. Supp. 287; Ætna Life Insurance Co. *v.* McNeely, *supra*.

[10] Murdock *v.* Waterman, 145 N. Y. 55; Mack *v.* Anderson, 165 N. Y. 529.